IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 878 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

AA PATHAN

Appearance:

1. First Appeal No. 878 of 1997

MR PB SETH, AGP, for appellant

MR GT DAYANI for respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 26/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By filing instant appeal under Section 96 of the Code of Civil Procedure, 1908, the State of Gujarat has questioned legality of judgment and decree dated

September 30, 1996, rendered by the learned 3rd Jt. Civil Judge (S.D.), Panchmahals at Godhra, in Special Civil Suit No. 88 of 1988, by which the Suit filed by the respondent to recover Rs.2,00,592/-with interest at the rate of 24% per annum from the date of the Suit till realisation, is decreed in part, and the appellant is directed to pay a sum of Rs. 1,70,592/-with running interest at the rate of 15% per annum from the date of Suit i.e. June 23, 1988, till realisation and proportionate cost.

2. The respondent is an Engineer and is carrying on business of construction. The Executive Engineer, Construction, R & B Division, Godhra, had invited tenders for the work of construction of administrative block-cum-workshop for Mini I.T.I. at Jhalod. The tender submitted by the respondent for a sum of Rs. 11,33,353=52 Ps. was accepted by the Executive Engineer, and work order dated July 20, 1984 was issued to him. As per the work order, the construction work was to be completed on or before July 19, 1985. The record indicates that the time for completion of work was extended upto January 19, 1986. According to the plaintiff, he had completed the construction work as required by the appellant and was, therefore, entitled to refund of Rs.43,100/-, which he had paid as security deposit. The case of the respondent was that he had done construction work worth Rs.50,346/-, for which 13th running bill was raised on March 31, 1987, but, payment of the same was not made and, therefore, he was entitled to the said amount. What was asserted by the respondent was that though he had completed the work entrusted to him, payment in part was made to him and, therefore, he was entitled to receive another sum of Rs.57,696/as per the rates mentioned in the tender. Moreover, it was the case of the respondent that since the department had delayed the payment by not preparing the final bill, he had suffered loss of interest at the rate of 18% per annum on amount of Rs.1,08,042/-for the period from March 1987 to March, 1988 and, therefore, was entitled to recover a sum of Rs.19,450/-being loss of interest. As the amount due and payable was not paid to the respondent, he had served a notice dated February 24, 1988 calling upon the appellant to pay a sum of Rs.2,00,592/-with interest at the rate of 24% per annum. The notice was not responded to and, therefore, the respondent instituted Special Civil Suit No.88 of 1988 in the Court of learned 3rd Jt. Civil Judge (S.D.), Panchmahals at Godhra, and claimed a decree of Rs.2,00,592/-with interest at the rate of 24% per annum from the date of Suit till realisation and cost.

3. On service of summons, the appellant contested the suit by filing written statement at Exh.38 contending, inter alia, that the claim advanced by the respondent was barred by limitation and as the same was false, the suit should be dismissed. According to the appellant, a sum of Rs. 3,47,561.91 Ps. was due and payable by the respondent to the appellant for the work of constructing diversion road outside Dahod town on Ahmedabad-Godhra-Dahod-Indore road and, therefore, the respondent was not entitled to refund of security deposit nor to the amount mentioned in the 13th running bill. So far as claim of Rs.57,696/-,which was based on account of rate mentioned in the tender, is concerned, the case of the appellant was that the respondent had failed to execute the work completely and was, therefore, not entitled to the same. According to the appellant, there was no agreement between the appellant and the respondent regarding payment of interest and, therefore, demand of interest at the rate of 24% per annum was not justified. By filing written statement, dismissal of the suit was demanded by the appellant.

4. Having regard to the pleadings of the parties, necessary issues for determination were raised by the trial Court at Exh.10. The respondent examined himself at Exh.46; whereas on behalf of the appellant, Mr.Rameshchandra Bhagwandas Vadhel, who was then discharging duties as Executive Engineer, was examined at Exh.71. The parties to the suit had also produced documentary evidence in support of their respective claims. On appreciation of evidence adduced by the parties, the trial Court held that it was proved by the respondent that no amount was payable by him to the appellant with relation to construction of diversion road which was entrusted to him earlier and, therefore, he was entitled to refund of amount of security deposit and amount of Rs. 50,346/-which was mentioned in the 13th running bill. According to the learned Judge, Exh.43 which is a letter addressed by the appellant to the respondent, indicated that the respondent had completed the work entrusted to him and, therefore, the respondent was entitled to a sum of Rs.57,696/-which was not paid to him as shown in the 13th running bill. The trial Court further held that the respondent had suffered loss of interest because there was unreasonable delay in payment of amount due after the construction work was completed and was entitled to a sum of Rs. 19,450/-as loss of interest. The learned Judge did not agree with the case pleaded by the respondent that he was entitled to a sum of Rs.30,000/-on account of overstay charges and rejected

the said claim. In ultimate analysis, the trial Court found that a sum of Rs.1,70,592/-was due and payable by the appellant to the respondent. Therefore, the trial Court has passed decree for the said amount with interest at the rate of 15% per annum from the date of the suit i.e. June 23, 1988 till realisation and costs by the impugned judgment and decree, which has given rise to instant appeal.

5. Mr.P.B.Seth, learned Assistant Government Pleader, pleaded that substantial amount was due and payable by the respondent to the appellant and, therefore, the trial Court was not justified in directing the appellant to refund the amount of security deposit and pay Rs.50,346/-as mentioned in the 13th running bill. It was claimed that the documents produced by the appellant showed that the plaintiff had not completed the construction work entrusted to him and, therefore, the trial Court was in error in directing the appellant to pay a sum of Rs.57,696/-on the ground that full payment at tender rate was not made to the respondent. After drawing attention of the Court to the principle laid down by the Division Bench in State of Gujarat v. Shirinbai P.Wadia & Anr., 17 GLR 638, the learned counsel of the State Government contended that the respondent was not entitled to interest for a period prior to the date of filing of the suit, but was entitled to interest from the date of demand i.e. the date on which notice was issued which is February 24, 1988 and, therefore, the decree passed by the trial Court should be suitably modified. The learned counsel emphasised that the decree impugned in the appeal is erroneous and, therefore, the appeal should be accepted.

6. Mr.G.T.Dayani, learned counsel of the respondent contended that no amount was due and payable by the respondent to the appellant and, therefore, the trial Court was justified in directing the appellant to refund the security deposit and make payment of Rs.50,346/-which was mentioned in the 13th running bill. According to the learned counsel of the respondent, the letter dated August 7, 1992 produced on record of the case at Exh.43 makes it very clear that the respondent had completed the work entrusted to him and, therefore, the direction given by the trial Court to the appellant to pay a sum of Rs. 57,696/-being the remaining amount to be paid to the respondent at tender rate, cannot be regarded as erroneous. The learned counsel pointed out that the decision in The State of Gujarat (supra) has interpreted the provisions of the Interest Act (No.XXXII of 1839), whereas as per the provisions of the Interest Act, 1978

as interpreted by the Supreme Court in B.V.Radhakrishna v. Sponge Iron India Ltd. (1997)4 SCC 693, the respondent would be entitled to interest not from the date of notice, but from the date mentioned in the notice and, therefore, the claim of interest which is decreed by the trial Court should be upheld. What was emphasised was that claim of interest at the rate of 24% per annum as advanced in notice dated February 24, 1988 was never refuted by the appellant and, therefore, the direction given by the trial Court to pay Rs.1,70,592/-with interest at the rate of 15% per annum cannot be regarded as illegal so as to warrant interference of this Court in instant appeal. It was asserted on behalf of the respondent that there is no substance in the appeal and, therefore, the same should be dismissed.

7. We have considered the rival submissions advanced at the Bar and taken into consideration the documents produced by the parties. The learned Assistant Government Pleader could not satisfy the Court that any amount was due and payable by the respondent to the appellant for construction work of diversion road which was entrusted to him earlier. It may be mentioned that regarding work of construction of diversion road outside Dahod town on Ahmedabad-Godhra-Dahod-Indore road, the respondent had filed Special Civil Suit No. 96 of 1987 in the Court of learned 4th Jt.Civil Judge (S.D.), Godhra and claimed a decree for a sum of Rs.3,71,000/-with interest and costs. The learned Judge had decreed the same in part vide judgment dated March 5, 1994 and directed the State Government to pay a sum of Rs.1,43,000/-with interest at the rate of 12% per annum and costs. Thereupon, two First Appeals were instituted in the High Court. First Appeal No.1945 of 1994 was filed by the respondent claiming that the trial Court should have decreed the suit in full; whereas First Appeal No.2453 of 1994 was filed by the appellant questioning legality of decree which was passed for a sum of Rs. 1,43,000/-with interest and costs. Both the appeals have been dismissed by the High Court vide judgment dated June 19, 2003. Therefore, the claim of the appellant that a substantial sum was due and payable by the respondent to the appellant cannot be accepted. Under the circumstances, the finding that the security deposit was refundable to the respondent and that the appellant was liable to pay a sum of Rs. 50,346/-as mentioned in 13th running bill cannot be regarded as illegal and is hereby confirmed.

8. The plea that the respondent had not completed the work entrusted to him and was, therefore, not

entitled to a sum of Rs.57,696/-is devoid of merits. The letter dated August 7, 1992 addressed by the appellant to the respondent, which is produced on record of the case at Exh.43, unerringly establishes that even as per the case of the appellant, the respondent had completed the work entrusted to him. When no work entrusted was left unexecuted and the respondent had completed the work of tender, this Court is of the opinion that the respondent would be entitled to payment at tender rate for the work done by him. Therefore, decree for Rs.57,696/-passed by the trial Court cannot be set aside on the ground that the respondent had failed to complete the work entrusted to him.

9. So far as payment of interest is concerned, this court notices that in State of Gujarat (supra), the Division Bench had occasion to interpret the provisions of the Interest Act, 1839 and in light of the provisions of Section 1 of the said Act, it was held by the Division Bench that the plaintiff in that case was entitled to interest from the date of demand i.e. date of service of statutory notice, and not from the period mentioned in notice. However, it is noticed that the relevant statute, which holds field for payment of interest, is the Interest Act,1978, and the Supreme Court while interpreting Section 3(1)(b) of the Interest Act, 1978 has held in B.V.Radhakrishna (supra) that the plaintiff would be entitled to interest not from the date of notice demanding the amount, but, from the date mentioned in the notice. In the statutory notice it was claimed by the respondent that he was entitled to interest from March 1987 till March 1988. This notice was never refuted by the appellant. Therefore, having regard to the principle laid down by the Supreme Court in the above quoted decision, this Court is of the opinion that the respondent would be entitled to interest not from the date of service of statutory notice, but, the date which was mentioned in the notice. Under the circumstances, the direction given by the trial Court to pay a sum of Rs.19,450/-being amount of loss caused on delayed payment under the final bill, cannot be regarded as illegal. The same is hereby upheld.

10. This brings the Court to the question whether the trial Court was justified in directing the appellant to pay decretal amount with interest at the rate of 15% per annum. It is well to remember that the rate of interest has been reduced substantially by almost all financial institutions including the Reserve Bank of India, which is authorised under Section 35-A of the Bombay Regulation Act, 1949 to issue directions/circulars from time to time

dealing with the rate of interest which can be charged. Having regard to the facts and circumstances of the case, the Court is of the opinion that interest of justice would be served if the appellant is directed to pay decretal amount with interest at the rate of 12% per annum, which would be reasonable rate of interest on equitable grounds. The decree impugned in the appeal, therefore, deserves to be modified to that extent.

For the foregoing reasons, the appeal partly succeeds. The decree passed by the trial Court for Rs.1,70,592/-is hereby upheld. However, the direction given by the trial Court to the appellant to pay the decretal amount with running interest at the rate of 15% per annum is hereby set aside, and it is directed that the appellant shall pay Rs.1,70,592/-with running interest at the rate of 12% per annum thereon from the date of the suit which is June 23, 1988, till realisation and proportionate costs as directed by the trial Court. The appeal stands allowed only to the extent indicated hereinabove. There shall be no orders as to costs. The office is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal, J.)

(Sharad D.Dave,J.)
(patel)